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26 UNITED STATES DISTRICT COURT

27 DISTRICT OF NEVADA

28 ORACLE USA, INC.; a Colorado corporation;
ORACLE AMERICA, INC.; a Delaware
corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
and SETH RAVIN, an individual,

Defendants.

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Case No. 2:10-cv-0106-LRH-VCF

**ORACLE'S MOTION TO SEAL
ORACLE'S OPPOSITION TO
RIMINI'S MOTION TO EXCLUDE
AND SUPPORTING EXHIBITS**

NOTICE OF MOTION AND MOTION

Pursuant to the Stipulated Protective Order governing confidentiality of documents entered by the Court on May 21, 2010, ECF No. 55 (“Protective Order”), Local Rules 10-5(b), Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation (collectively “Oracle”) respectfully request that the Court order the Clerk of the Court to file under seal the following documents:

- Portions of Oracle’s Opposition to Rimini’s Motion to Exclude (“MTE Opposition”);
- Portions of Exhibits 1 and 4 to the Declaration of John A. Polito in Support of Oracle’s Opposition to Rimini’s Motion to Exclude (“Polito Opp. Declaration”);
- Exhibits 2-3 to the Polito Opp. Declaration in their entirety; and
- Portions of Exhibits 5-8 to the Declaration of Barbara A. Frederiksen-Cross in Support of Oracle’s Opposition to Rimini’s Motion to Exclude (“F-C Opp. Declaration”).

Public, redacted versions of Oracle’s MTE Opposition, Exhibits 1 and 4 to the Polito Opp. Declaration, and Exhibits 5-8 to the F-C Opp. Declaration were filed on August 14, 2020. ECF Nos. 1407, 1407-2, 1407-3, 1407-4, 1407-5, 1407-7, 1407-8, 1407-9, 1407-10. Versions of these documents without redactions will be subsequently filed under seal with the Court and linked to this motion.

Oracle's Motion to Seal is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, documents incorporated by reference, and the entire record in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. **LEGAL STANDARD**

Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c). The Ninth Circuit has held that “compelling reasons must be shown to seal judicial records attached to a dispositive motion” based on the presentation of “articulable facts.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179, 1181 (9th Cir. 2006). Courts have discretion to determine what constitutes a “compelling reason,” and have found “sources of business information that might harm a litigant’s competitive standing” are sufficient to meet the “compelling reasons” standard. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (internal citations omitted).

Documents may be sealed for “good cause.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006); *Selling Source, LLC v. Red River Ventures, LLC*, 2:09-CV-01491-JCM, 2011 WL 1630338, at *1 (D. Nev. Apr. 29, 2011) (citing *Phillips v. General Motors*, 307 F.3d 1206, 1210, 1213 (9th Cir. 2002)). With non-dispositive motions, a party may overcome the presumption against sealing a document by showing that the material to be filed under seal is being done so pursuant to a valid protective order. ECF No. 1349 at 3 (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)))).

Under the Protective Order, a “Designating Party may designate any Discovery Material as ‘Confidential Information’ or ‘Highly Confidential Information –Attorneys’ Eyes Only’ . . . if such counsel in good faith believes that such Discovery Material contains such information and is subject to protection under Federal Rule of Civil Procedure 26(c).” Protective Order ¶ 2. Such a designation “constitute[s] a representation that an attorney for the Designating Party reasonably believes there is a valid basis for such designation.” *Id.*

II. ARGUMENT

With respect to Oracle’s MTE opposition, portions of this motion (including at 4:20, 4:22, 13:4, 13:10-11, 15:22) contain non-public, technologically and commercially sensitive information relating to Oracle’s PeopleSoft and JD Edwards software. Disclosure of the confidential information in these documents would afford Oracle’s competitors an unfair competitive advantage in the software industry by revealing confidential technical information about proprietary Oracle source code files. *See Hologram USA, Inc. v. Pulse Evolution Corp.*, 2015 WL 105793, at *2 (D. Nev. Jan. 7, 2015) (granting motion to seal where documents “contain[ed] information that could injure Plaintiffs’ competitive posture in the . . . industry”); *Spectrum Pharm. Inc. v. Sandoz Inc.*, 2014 WL 4202540, at *2 (D. Nev. Aug. 21, 2014) (granting motion to seal where documents contained “proprietary, business practice, trade secret, and technical information that could injure the parties’ competitive posture”).

13 Exhibits 2-4 to the Polito Opp. Declaration and Exhibits 5-7 to the F-C Opp. Declaration
14 also contain Oracle’s non-public, technologically, and commercially sensitive information:

15 Exhibits 2 and 3 are documents that Rimini produced under the Bates numbers
16 RSI007294828 and RSI007296263, respectively. Portions of these documents contain non-
17 public, technologically, and commercially sensitive information relating to Oracle source code
18 files.

19 Exhibit 4 comprises transcripts from the August 21, 2018 deposition of Rimini Street,
20 Inc.'s expert Owen Astrachan in *Rimini II*. Portions of this exhibit (including at 250:5) contain
21 non-public, technologically, and commercially sensitive information relating to Oracle source
22 code files.

23 Exhibit 5 comprises excerpts of the Corrected Post-Injunction Expert Report of Barbara
24 Frederiksen-Cross. Portions of this exhibit (including at footnotes 90, 299, 343, 353, 417, 420,
25 439, 441, 443, 445 and paragraphs 243, 285-87, 316-17, 322, 365-66, 368, 371, 380, 381.1,
26 381.2, 381.3, 381.4, 381.5) contain non-public, technologically, and commercially sensitive
27 information relating to Oracle source code files.

1 Exhibit 6 comprises excerpts of the Corrected Post-Injunction Surrebuttal Expert Report
 2 of Barbara Ann Frederiksen-Cross. Portions of this exhibit (including at paragraphs 16 and 17)
 3 contain non-public, technologically, and commercially sensitive information relating to Oracle
 4 source code files.

5 Exhibit 7 comprises excerpts of the *Rimini II* Supplemental Expert Report of Barbara Ann
 6 Frederiksen-Cross. Portions of this exhibit (including at footnote 114 and page 54) contain non-
 7 public, technologically, and commercially sensitive information relating to Oracle source code
 8 files and software.

9 Oracle requests that the Court seal portions of its MTE Opposition, of Exhibits 2-4 to the
 10 Polito Opp. Declaration, and of Exhibits 5-7 to the F-C Opp. Declaration for the reasons stated
 11 above. Oracle also requests that the Court seal portions of its MTE Opposition and Exhibits 1, 4-
 12 8 and Exhibits 2-3 in their entirety because they reference documents or testimony that Rimini
 13 has designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the
 14 Protective Order or reflect information drawn from data sources that Rimini has designated as
 15 “Highly Confidential – Attorneys’ Eyes Only.” Oracle submits these documents under seal
 16 pursuant to the Protective Order based on Rimini’s representation that it reasonably believes there
 17 is a valid basis under the Protective Order for its confidentiality designations. Because these
 18 materials were designated by Rimini, Oracle is not in a position to provide further justification for
 19 why filing the documents publicly would cause Rimini harm sufficient to justify sealing.

20 This Court has previously granted motions to file under seal portions of documents
 21 containing this and other similar types of confidential information. *See, e.g.*, ECF Nos. 226, 325,
 22 518, 904, 990, 1107, 1228, 1261, 1349; *see also Rimini II*, Case No. 2:14-cv-1699, ECF No. 627.
 23 Sealing the confidential materials referenced herein would not frustrate the public’s visibility into
 24 the judicial process because Oracle’s request to seal is narrowly tailored to only those documents
 25 that contain particularly sensitive information. Oracle has submitted all other portions of its
 26 Motion and supporting documents to the Court’s public files, which allows public access to all
 27 materials except for the items discussed above.

III. CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the Court grant leave to file under seal the materials discussed above.

MORGAN, LEWIS & BOCKIUS LLP

DATED: August 14, 2020

By: /s/ John A. Polito
John A. Polito

Attorneys for Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation

[PROPOSED] ORDER

Pending before this Court is Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation’s (collectively “Oracle”) Motion to Seal Oracle’s Opposition to Rimini’s Motion to Exclude and Supporting Exhibits and Supporting Exhibits. Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c). Having considered Oracle’s Motion to Seal and for good cause existing:

IT IS HEREBY ORDERED THAT Oracle's Motion to Seal is GRANTED. The Clerk of the Court shall file under seal the following documents and materials:

- Portions of Oracle’s Opposition to Rimini’s Motion to Exclude;
- Portions of Exhibits 1 and 4 to the Declaration of John A. Polito in Support of Oracle’s Opposition to Rimini’s Motion to Exclude;
- Exhibits 2-3 to the Declaration of John A. Polito in Support of Oracle’s Opposition to Rimini’s Motion to Exclude in their entirety; and
- Portions of Exhibits 5-8 to the Declaration of Barbara A. Frederiksen-Cross in Support of Oracle’s Opposition to Rimini’s Motion to Exclude.

IT IS SO ORDERED.

DATED:

By:

Hon. Larry R. Hicks
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2020, I electronically transmitted the foregoing ORACLE'S MOTION TO SEAL ORACLE'S OPPOSITION TO RIMINI'S MOTION TO EXCLUDE AND SUPPORTING EXHIBITS and [PROPOSED] ORDER to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

MORGAN, LEWIS & BOCKIUS LLP

DATED: August 14, 2020

By: /s/ John A. Polito
John A. Polito

Attorneys for Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation